



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: May 17, 2001 REPORT NO. 01-068 **REVISED**

ATTENTION: Honorable Mayor and City Council
Docket of May 22, 2001

SUBJECT: Proposed Debarment of Southern California Underground Contractors, Inc., its divisions and organizational elements, its Affiliates, James Craig Jackson, and George Rogers Frost. [These individuals, the corporate entity and its sub-parts will hereinafter be referred to as "SoCal" for convenience and clarification.]

SUMMARY

Issue - Should the City Council permanently debar SoCal under San Diego Municipal Code sections 22.0801 et seq.?

Manager's Recommendation - Adopt a resolution permanently debarring SoCal and include Findings establishing that SoCal engaged in, including but not limited to, a pattern of willful acts of corruption and deception, of unethical and unacceptable business practices, and of inadequate contract performance while performing City public works contracts. Permanently debar SoCal under San Diego Municipal Code sections 22.0801 et seq.

Fiscal Impact - None.

Reference - City Manager Report No. 00-132, accompanying documentation and the Administrative Record/Project Files described below, incorporated herein by this reference.

BACKGROUND

This rehearing is before the City Council to determine whether or not SoCal should be permanently debarred. Debarment is a sanction to be imposed only in the public interest for the City's protection and not for purposes of punishment. It is designed to protect the City by ensuring full and open competition by granting contract awards only to responsible contractors. On June 26, 2000, after a noticed public hearing, SoCal was debarred by the San Diego City Council for egregious corrupt practices.

Generally, SoCal was caught stealing water on no less than five occasions. SoCal's representatives violated traffic control at least sixteen times, on at least one occasion a police officer was forced to issue a citation in order to secure their compliance. Two of those traffic control violations directly involved deceit by SoCal. First, SoCal staff modified an approved traffic control permit by adding street names of areas which were not approved and for which no permit was issued. Second, SoCal admittedly falsified a traffic control drawing by essentially "cutting and pasting" an approval stamp from an approved drawing onto the non-approved drawing. This traffic control drawing was modified to justify crew work in a public right-of-way without permission. Additionally, SoCal misrepresented that they replaced sewer laterals which they did not. Further, SoCal filed false claims inflating invoices for extra work of staff labor rates and equipment rates to obtain undue monies from the City. SoCal's egregious business practices endangered the public health, safety and welfare of the citizenry.

DISCUSSION

A. Procedural History

SoCal's business practices compelled the City Council to take swift and effective action permanently debarring them from committing any further willful acts of corruption and deception, of unethical and unacceptable business practices, and of inadequate contract performance. The timeline that led to the debarment is described below:

On June 7, 2000, City staff contacted SoCal and informed them of the City Manager's intent to recommend debarment to the City Council.

On June 8, 2000, City staff met with SoCal, and provided them a detailed fact sheet of their violations and evidence upon which the City Manager's proposal was based.

On June 13, 2000, City staff met, at SoCal's request, with SoCal to allow them an opportunity to respond to the allegations. SoCal admitted most of the allegations as true. However, SoCal contended that when violations were brought to their attention, SoCal

corrected them. Therefore, in SoCal's opinion debarment was unfair. City staff was not satisfied that SoCal understood the gravity of their egregious business practices particularly when their "corrections" were often corrections of behavior for which they had previously been admonished (for example, as described above, they were caught stealing water at least five times, and violated traffic control at least sixteen times). City staff believed that SoCal would continue to perform unacceptable practices and only modify their behavior after they were "caught." Therefore, City staff proceeded to City Council with a recommendation for permanent debarment.

Prior to the debarment hearing, SoCal filed documents to the City Council for review and consideration. In their documents, SoCal requested a sixty-day continuance of the matter. At the debarment hearing, in light of the gravity of SoCal's actions and the need for expeditious action, the City Council provided SoCal a one week continuance.

Although there is no absolute right to depositions in an administrative hearing, the City accommodated SoCal's request to depose the following six City inspectors regarding the facts underlying the debarment:

June 22, 2000: Manolito Ramirez
Ky Stratton

June 23, 2000: Luis Duenes
Craig Fergusson
Mario Reyes
Collins Solomon

On June 23, 2000, the City made available to SoCal all Project Files for the Group Jobs SoCal was working on. SoCal representatives reviewed the files and made copies. SoCal staff inspected these documents at the City Engineering Department Field Division. In addition, SoCal had a copy service copy selected documents.

Additionally, on January 24, 2001, SoCal was provided the Administrative Record in the matter of Superior Court Case No. GIC750233. The Project Files described above are also in this Administrative Record provided to SoCal.¹

¹ Information contained in these project files was discussed at the June SoCal debarment hearing. For convenience and clarity, because the Administrative Record is fully paginated and contains the Project Files, the Administrative Record is before this Council and available for review and reference for the SoCal debarment rehearing.

The debarment was heard on June 26, 2000, by the City Council. Staff gave a ten minute presentation and SoCal was given ten minutes to present their case. After considering all evidence presented, the City Council debarred SoCal.

B. Procedural Due Process

SoCal, once debarred, filed two lawsuits. One was a lawsuit for damages allegedly resulting from the debarment. The second was an Administrative Writ. In the Writ SoCal challenged the procedural due process of the debarment. SoCal argued that they were not provided adequate notice, specifically, the requested sixty days, and an adequate opportunity to be heard. The Honorable Superior Court Judge Amos found that SoCal was not provided adequate time to prepare a defense of the debarment and therefore was denied due process. The court remanded the matter to this City Council for a rehearing of the debarment.

In addition to the above described notice, although there is no absolute right to depositions in an administrative hearing, again the City accommodated SoCal's request to depose twelve City staff members. Depositions of the following City staff were taken by SoCal. These depositions are in addition to those depositions taken in June of 2000:

May 3, 2001:	George Loveland, Senior Deputy City Manager
April 26, 2001:	Frank Belock, Director,
April 24, 2001:	April Penera, Assistant Deputy Director, Engineering & Capital Project Department
April 25, 2001:	Dave Zoumaras, Senior Engineer, Engineering & Capital Project Department
April 30, 2001:	Reza Taleghani, Associate Engineer, Engineering & Capital Project Department
May 10, 2001:	Hamid Yaghoubpoor, Associate Engineer Engineering & Capital Project Department
May 11, 15, 2001:	Hushmand Yazdani, Associate Engineer, Engineering & Capital Project Department
May 7, 2001:	Ross Jackson, Associate Engineer, Engineering & Capital Project Department
May 9, 2001:	Duncan Hughes, Associate Engineer, Engineering & Capital Project Department
May 2, 2001:	Victor Razon, Assistant Engineer, Engineering & Capital Project Department
May 15, 2001:	Ken Zerehpoush, Assistant Engineer, Engineering & Capital Project Department

May 2, 2001: Janice Ellis, Claims Representative II, Risk Management Department

C. Factual Background

1. Misuse of Water:

- a. On December 17, 1999, SoCal was observed filling a water truck from a City of San Diego fire hydrant without a meter as required by Section 7-15 of the Sewer Group Job 647 construction contract, City of San Diego Supplemental Amendments to the Standard Specifications for Public Works. The City notified SoCal that a properly registered, functional water meter was required.
- b. Again on February 15, 2000, SoCal was observed filling a water truck from a City fire hydrant without a meter as required by the Water and Sewer Group Job 464A construction contract. On that date, City staff verbally notified SoCal, and again on February 18, 2000, gave written notice to SoCal of the contract requirement that a water meter was necessary.
- c. On Water and Sewer Group Job 464A on April 13, 2000, SoCal used an inoperable water meter, Serial No. 91004201, which was confiscated by City staff and returned to the City Water Department. The Water Department discovered that this meter had been registered to SoCal, but SoCal had reported it lost or stolen three months earlier.
- d. On April 28, 2000, SoCal used an inoperable water meter, Serial No. 88537360, on Water and Sewer Group Job 530A by connecting it to a City of San Diego fire hydrant. This meter also had been reported lost or stolen by SoCal, and it was overdue for a reading. City staff again advised SoCal both verbally and in writing of the contract requirement that a water meter must be properly registered.
- e. On May 3, 2000, City staff checked the water meter SoCal was using on Sewer Group Job 636 and found that the meter, Serial No. 89542881, also had been reported lost or stolen by SoCal in December 1999.
- f. After numerous and repeated notices from City staff of violations relating to water meters, according to SoCal, SoCal rented five new water meters from the City Water Department in late April/early May 2000. However,

after renting these new water meters, City staff observed them again using water without a meter to acquire water for their construction work.

2. Traffic Control Permits:

- a. On Water and Sewer Group Job 464A, SoCal began work in the public right-of-way without a required traffic control permit. SoCal disregarded three written violation notices dated January 12, 2000, January 31, 2000 and February 2, 2000, and continued to work without a traffic control permit thereby creating a threat to public health and safety.
- b. On Water and Sewer Group Job 496, the City issued SoCal a traffic control violation notice on February 3, 2000, because SoCal failed to: 1) install required traffic control devices which warn motorists of construction activities and guide them safely through a construction zone; 2) provide continuous access for emergency vehicles and local traffic as required; 3) remove construction debris from the right-of-way; and 4) cease work and exit the right-of-way during peak traffic hours as required by their traffic control permit.
- c. On Water and Sewer Group Job 605, SoCal failed to obtain a traffic control permit and on several occasions failed to implement proper traffic control. City staff issued written stop work or violation notices after observing this behavior on January 27, 2000, February 16, 2000, February 25, 2000, March 2, 2000, March 17, 2000 and May 23, 2000. On April 3, 2000, SoCal was cited by the San Diego Police Department for performing work in the right-of-way without a valid traffic control permit.
- d. While performing work on Water and Sewer Group Job 464A, SoCal presented a traffic control permit to City staff. After further investigation by staff, it was later determined that SoCal added a street to the previously approved traffic control permit, so it appeared to cover their ongoing work.
- e. Also on Water and Sewer Group Job 464A, SoCal presented another traffic control drawing which had been fabricated in order to convince City staff to allow SoCal to continue working in the right-of-way. On the traffic control drawing presented by SoCal, SoCal had cut an approval stamp from a different, approved drawing and pasted it on an unapproved drawing. SoCal acknowledged to City staff that, in fact, they had modified the unapproved drawing to make it appear valid.

3. Other Inadequate Contract Performance

- a. In March 2000, SoCal provided late notice to residents that construction work would require that the residents avoid parking on the street on certain dates. The late notice SoCal provided failed to state necessary parking restrictions to prevent citizens from parking in the construction areas. As a result, one citizen's car was improperly towed at their expense.
- b. SoCal committed all of the following: on March 30, 2000, SoCal failed to adhere to City staff instructions to avoid impacting a concrete encased high voltage electric conduit; on March 31, 2000, SoCal told City staff that measurements revealed that work could be performed without impacting the concrete encased electric conduit. However, despite their representations, SoCal began chipping away at the concrete encased conduit with a large hydraulic chipping device attached to a backhoe. SoCal's chipping at the concrete damaged the electrical conduit and caused a power outage in the community. In addition, SoCal billed the City for additional work caused by the power outage.
- c. On Sewer Group 647, SoCal constructed new portions of the sidewalk and other improvements thereby implying the work had been completed and that they had completed installation of sewer laterals. SoCal represented to City staff that the laterals had been replaced. Suspicious in light of SoCal's conduct in other regards, the City required SoCal to excavate to confirm that the laterals had been replaced. Excavation of one of the laterals revealed that SoCal did not replace the dilapidated sewer laterals. Before City staff could observe excavations of the other sewer laterals that were allegedly replaced, (the inspection was scheduled for December 20, 1999), SoCal performed unauthorized work over the weekend of December 18, 1999, and replaced those other sewer laterals which SoCal claimed to have replaced.

4. False Claims for Extra Work:

- a. SoCal submitted Daily Extra Work Reports [DEWR] claiming inflated labor compensation rates. On Water and Sewer Group Jobs 464A, 514, 530A and Sewer Group Job 636, the construction contracts section 3-3.2.2 require SoCal to charge the City its actual labor costs. SoCal charged the City \$28.00 per hour for labor when SoCal's actual costs were less than

\$11.00 per hour, and only after being confronted and receiving several written requests by the City did SoCal finally submit actual labor rates.

- b. SoCal submitted several DEWRs to the City as a result of extra work performed by SoCal on Water & Sewer Group 464A. While evaluating these DEWRs, City staff noted a discrepancy regarding the model number and hourly rate for a backhoe. SoCal's DEWRs charged the hourly rate for a JD 510, \$22.67, which is greater than the hourly rate for a JD 310D, \$16.52. City staff took photographs of the backhoe in question which show both of the following: 1) the "3" in the standard 310D sticker on the side of the backhoe was removed and replaced with a "5," to make it look like a 510, and 2) inside the hood where the maintenance for this type of backhoe is located, the maintenance record indicated the backhoe was a 310D.
- c. On Sewer & Water Group 605, SoCal filed three workers' compensation claims against the City Water Department's Owner Controlled Insurance Program [OCIP]. Through independent investigation by the OCIP Risk Manager, Risk Management discovered that these workers were not assigned to the site on a full time basis and/or that the workers' injuries did not occur while performing work at the site as alleged by SoCal. In one of the cases, work on the job had been shut down at the date and time during which the injury was alleged to have occurred.

D. Existing Contracts

At the time of the debarment, SoCal was performing work on ten existing contracts. In that regard, the City Council directed that SoCal be allowed to complete those contracts. To date, SoCal has completed six of those contracts. The status of the remaining four contracts is:

<u>PROJECT</u>	<u>COMMUNITY</u>	<u>STATUS</u>
Sewer & Water Group 514	North Park	95% complete
Water & Sewer Group 530A	Old Town	95% complete
Sewer Group 630	Grant Hill/Stockton	99% complete
Sewer Group 647	Talmdage	99% complete

CONCLUSION

Honorable Mayor and City Council
May 17, 2001
Page 9

SoCal has repeatedly and flagrantly engaged in a pattern of willful acts of corruption and deception, of unethical and unacceptable business practices, and of inadequate contract performance. These acts demonstrate a consistent and pervasive disregard for the public health, safety and welfare. The City's cost of construction management is significantly greater than for other contractors because of the need to constantly monitor their performance to prevent their deceptive conduct. It is in the City's best interests to permanently debar SoCal.

ALTERNATIVES

1. The City Council could alternatively debar SoCal for a period of three years or less.
2. Do not debar SoCal and allow future contracting with the City.

Respectfully Submitted,

April Penera
Assistant Deputy Director
Field Engineering Division
Engineering & Capital Projects Dept.

Approved: George Loveland
Senior Chief Deputy City Manager
Public Works

Frank Belock
Engineering & Capital Projects Dept.
Department Director